



**Young Traders Limited v Gumchem (K) Limited (Civil Appeal (Application)
E532 of 2020) [2025] KECA 314 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 314 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E532 OF 2020
AO MUCHELULE, JA
FEBRUARY 21, 2025**

BETWEEN

YOUNG TRADERS LIMITED APPLICANT

AND

GUMCHEM (K) LIMITED RESPONDENT

(An application for extension of time to file the amended memorandum of appeal and the record of appeal against the judgment and decree of the High Court of Kenya at Nairobi (Sergon, J.) dated 6th November 2020 in Civil Suit No. 804 of 2000)

RULING

1. On 8th November 2024 Mumbi Ngugi, JA delivered a ruling in which she allowed an application dated 24th May 2024 that sought leave to amend the memorandum of appeal dated 29th December 2020 and the record of appeal dated the same day by deleting the name of Stephen Kinuthia Waithaka (named as second respondent) who had died on 11th July 2000 and the suit against him having abated by order of the High Court dated 22nd March 2010. The learned judge did not specify the timeline within which the amendment was to be done. Under Rule 46(2) of the Court of Appeal Rules, 2022, the leave was to determine if the amendment was not done within 48 hours. This is what happened.
2. The same applicant, Young Traders Limited, has by application dated 25th November 2024 sought the extension of time within which it can comply with the orders issued on 8th November 2024, and that the amended memorandum of appeal and record of appeal lodged and served on 25th November 2024 be deemed to be properly lodged and served. The application was brought 14 days after the lapse of the 48 hours. Kithinji Marete is the applicant's advocate, and states that it was his absence from the country and the leave he took when he returned to attend to his family matters that made him to inadvertently fail to act on time. He expected his associate M/s Lena Lumumba to effect the amendment but she did not.



3. The appeal subject of the application followed the applicant's dissatisfaction with the judgment dated 6th November 2020 delivered at the High Court of Kenya at Nairobi by Seron, J. The appeal challenged the legal status of the respondent, Gumchem (K) Limited, to sue or be sued. It appears that the appeal is now ready for hearing.
4. The application was opposed through the replying affidavit sworn by John Peter Kamau Ruhangi, a director of the respondent company. According to him, both the applicant and the advocate were not vigilant litigants in amending the pleadings following the leave to amend; that the judgment subject of the appeal having been delivered on 6th November 2020, the respondent has waited for long seeking its resolution.
5. The applicant swore a further affidavit to state that it has been vigilant in pursuing the appeal, as can be seen from the application for the stay of the decree and the application to call additional evidence, both applications now having been resolved by this Court.
6. One would have expected that, once the applicant obtained leave to amend its pleadings, it was going to move with expedition to comply. It did not. Nonetheless, the delay occasioned was for a short time, and the explanation tendered is satisfactory. It is not every lapse that should attract a draconian step of locking a party from the seat of justice. Justice is sweeter when the dispute between parties has been substantially heard and decided on merits. I do not think the application has been brought in bad faith, or for the sole intention of delaying or subverting justice.
7. I, consequently, exercise my discretion under Rule 4 of the Court of Appeal Rules, 2022 and extend time, with the result that the amended memorandum and record of appeal lodged and served on 25th November 2024 shall be deemed to be duly lodged and served.
8. The applicant has been indulged. He will pay the costs of the application to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF FEBRUARY 2025.

A. O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

